

COMMITMENT for Insurance of Advances (Sections 207, 220, 221, 241(a) and 231)

**OFFICE OF HOUSING
Multifamily Production**

**U.S. Department of Housing
and Urban Development**

EXHIBIT B: ADDITIONAL CONDITIONS New Construction/Substantial Rehabilitation

{INSTRUCTIONS}: Include all applicable conditions in this form as Exhibit B: Additional Conditions.

If applicable, add any unique, deal-specific conditions required by HUD. Note that there are no standard boilerplate deal-specific conditions. These conditions are of such nature that they cannot be anticipated with predetermined language.

Also add any applicable conditions required under state law.}

Preoccupancy Conference. {Only NC or SR Not in HUD's Inventory}

At 80% completion, a Preoccupancy Conference must be scheduled with **NAME of Account Executive or Senior Account Executive**, who can be contacted at **PHONE NUMBER**.

Regulatory Agreement. [MAP Guide Chapter 8.3.E 5 & 6]

Projects with LIHTC Plans, Specifications and Cost Estimates. {LIHTC Requiring Plans and Specs} [Chapter 5.6.E]

As an accommodation to the Borrower, this commitment has been issued and based upon preliminary drawings, instead of the final drawings, specifications and cost estimates. At least 30 days prior to the scheduled date for Initial Endorsement, HUD must receive the final drawings, specifications and the lender's architectural/cost review report for review and approval to ensure consistency of design and cost. In the event that there is a net cumulative construction cost change of more than 5%, or a change in design concept, this commitment shall be subject to and conditioned upon the further approval of HUD, to be evidenced in writing. Based on such review this commitment may be terminated and voided by HUD, or, additional conditions may be imposed at HUD's option.

Investment of Tax Credit Equity Proceeds. {LIHTC Projects} [MAP Guide Chapter 8.14.M.4]

- a. This Commitment is subject to, and has been issued upon the reliance of the successful allocation or reservation to the project of LIHTC, Historic Tax Credits or New Markets Tax Credits. In addition to the standard provisions that must be included in the organizational documents for the Borrower entity, a provision must be added that prohibits any changes to the organizational documents that affect the obligations of the tax credit investor without written consent of the Lender and HUD.
- b. The initial equity investment must be a minimum of 20% and must be listed as a line item on the initial requisition, form HUD 92403, Application for Insurance of Advance of Mortgage Proceeds, for immediate disbursement.

Operating Income. {LIHTC Projects} [Chapter 16.4.A)

Prior to and as an additional condition of Final Endorsement, because the project is exempt from providing a Cost Certification, when the project reached substantial completion, as deemed by the HUD Inspector, the Lender will be notified of the substantial completion date, and the Borrower must account for all operating income during construction and ending three months prior to the originally scheduled date of the first principal payment under the Mortgage. An income and expense statement must be submitted covering the period from first occupancy (if occupancy occurred during construction) or from the date of substantial completion through the period ending three months before the date of the first principal payment under the Mortgage as originally scheduled. The statement must be submitted to HUD at least 30 days before the date scheduled for Final Endorsement. If the income and expense statement evidences receipt of net operating income during this period, the Borrower may be required to allocate the income received during this period in accordance with current Cost Certification guidance.

Additional Lender Certification. {Tax Exempt Bonds & 4% LIHTC Projects} [Chapter 14.19.F)

In transactions involving short-term, tax exempt bonds secured with cash collateral, in order to qualify for 4% Low Income Housing Tax Credits, in combination with Ginnie Mae securities, the bond documents must be comply with, and the FHA lender must provide before Initial Endorsement, the “Lender Certification for Tax Exempt Bonds and 4% Low Income Housing Tax Credit Transactions”.

Environmental Remediation Plans. {Used after HUD has approved the plan and implementation of mitigation and remediation will continue throughout the construction period. This includes any plans for remediation of site contamination, wetlands impacts, noise impacts, radon, historic preservation, endangered species, acceptable separation distance (ASD) and/or floodplain management.} [Chapter 9.2.A.8]

The environmental mitigation and remediation plan has been reviewed and approved by HUD. This plan must be adhered to throughout the construction period, in addition the Borrower, General Contractor and Architect must provide a written compliance certification regarding the environmental mitigation and remediation plan to the Construction Manager prior to Final Endorsement.

Conditional Letter of Map Amendment (CLOMA) or Map Revision (CLOMR). {Only used in transactions that required obtaining a CLOMA or CLOMR from FEMA prior to submission of the Pre-Application or straight to Firm Application} [Chapter 9.5.E.4.a & b]

- a. Approval of this Firm Commitment is conditioned on the Borrower (1) meeting the requirements of the CLOMA or CLOMR; (2) obtaining a Final Letter of Map Amendment (FLOMA) or Map Revision (FLOMR) removing the entire site from the applicable floodplain prior to Final Endorsement; and, (3) maintaining flood insurance on any building during the construction period until the FLOMA or FLOMR is issued.

Land Use Restriction Agreement (LURA). (The wording can be used for any other recorded document; simply insert the name of that document or documents)

The Land Use Restriction Agreement (LURA) must be subordinate to the FHA insured mortgage in accordance with Appendix 5.3 of the Closing Guide (Revised February 2015).

Assignment of Section 8 Contracts. (If applicable)

The Assignment of a Section 8 Contract must be completed and executed prior to endorsement.

Shared Use Agreement.

A Shared Use Agreement between _____ and _____ shall be provided by the lender and approved by HUD prior to endorsement.

New Business Partner. The Mortgagor, as a new Business Partner, must register online at the Business Partner Registration HUD Multifamily page. This site is accessible to them without a password or ID. After completing and submitting their information, they will be recorded as “known to HUD systems.”

Requisition for Disbursement of Funds, HUD 92403. {Check with the Closing Coordinator to see if this should be added}

At least three days prior to the scheduled Initial Endorsement the original Requisition for Disbursement of Funds, Form HUD 92403 along with the necessary backup, must be submitted to the Closing Coordinator, [Name of CC] for review. A draft copy should be submitted as soon as available after issuance of the Firm Commitment.

Affirmative Fair Housing Marketing Plan (AFHMP). {If not approved prior to issuance of Firm Commitment}

The Affirmative Fair Housing Marketing Plan (AFHMP) has been forwarded to FHEO for approval. This approval must be received prior to initial closing.

Commercial Space and Income. {Discuss with the HUD Appraiser before using to confirm amount of Tenant Improvement Escrow needed.}

Commercial space and income has been included in the underwriting. All commercial space, prospective or otherwise, must conform to HUD requirements before being executed. In addition, a Tenant Improvement Escrow in the amount of [total or per square foot amount] must be established for “finish out of commercial space.”

Broker/Correspondent/Packager Fee.

The Mortgagee must confirm that the fees paid to [Name of Broker] of [Name of Company] are paid solely from Mortgagee fees paid through this transaction.

Air Rights. {Use only if applicable}

At or before initial closing, HUD and mortgagee shall have approved an air rights lease between the mortgagor and the owner of _____ (FHA # _____). Such air rights lease shall be recorded prior to the mortgages on the project and _____.

Condominium Agreement. {Use only if applicable}

Loan documents shall include provisions acceptable to HUD and the mortgagee that require the mortgagor to create a condominium consisting of two units, one of which will be this project and the other, _____ (FHA# _____). This condominium must be created (including the receipt of all governmental approvals and recording of all required documents) prior to initial closing. In connection with the creation of the condominium, the loan documents shall be amended as required by HUD and mortgagee (including a change in the legal description) to reflect the creation of the condominium.

The condominium documents must include various easements and agreements which will address both the legal and operational aspects of the project such as: (i) maintenance and repair of common elements and common areas; (ii) rights and terms of use of common elements and common areas; (iii) ingress, egress and parking; and (iv) a requirement that _____ (FHA # _____) continuously offer guest meals for purchase to the Senior Apartments' residents. At or before initial endorsement, HUD and the Mortgagee must approve the form of condominium documents.

Architectural Drawings and Specifications. {Sample only; change wording to satisfy Construction Analyst as needed}

No later than 14 days prior to the anticipated initial endorsement date, three sets of architectural drawings and specifications, along with all modifications or addenda, are to be delivered to HUD. After the preconstruction conference two sets will be retained by HUD (one for the Construction Manager and one for the HUD Inspector) and one set will be provided to the General Contractor/Architect for use. These documents must address the following:

- a. Provide approved offsite civil plans.
- b. Coordinate the civil site plans, landscaping site plans, and architectural site plans. For example, the location of the trash compactor, planting areas in the parking lot, gazebo and outdoor kitchen differs between the plans.
- c. Pool must be ADA compliant.
- d. The details of the wrought iron fence and wood fence differ between the landscaping plans and the architectural plans.
- e. The upper cabinets in the clubhouse kitchen and workroom should be 48" AFF.
- f. Provide the correct sheet name in the title block for sheet A3.5.

Final Plans and Specification Manuals. {For use when requested by Construction Analyst and more likely than not used when a satellite office is involved}

As an accommodation, this commitment has been issued and based upon schematic drawings, instead of the final drawings and specifications. At least 30 days prior to the scheduled date for Initial Endorsement, a ½ sized set of Plans and a complete Specifications Manual must be submitted to Name of CA] HUD's [office location] for review and approval. [Name] can be reached at [phone number]. He/She will provide information on where the three approved sets of Plans and Specs with signature blocks will need to be mailed for the preconstruction conference and initial closing. In addition, it is the Mortgagee and General Contractor's responsibility to incorporate the most current Davis Bacon Wage Rates into the appropriate documents.

Radon.

A Radon report is required for all applications, unless an exception listed in the MAP Guide Chapter 9, Section 5.C.2.c applies. An amended radon report must be issued if the testing and/or mitigation will occur after application submittal according to the requirements listed in Chapter 9, Sections 5.2 and 5.5. All testing and mitigation must be performed under the direct supervision of a Radon Professional and follow the testing standards outlined in Chapter 9.5.C.2.d of the MAP Guide.

Green Initiatives. {Used if lower MIP rate is being used to calculate MIP}

The proposal has indicated that construction qualifies for the lower MIP rates based on meeting the threshold outlined for "green initiatives." Prior to Final Endorsement, the architect must provide a written certification identifying the standards used to meet this threshold.

Construction Administration. {Used if identity of interest between Architect and Borrower}
Based on the identity of interest with the Mortgagor, [Name of Architect] cannot fill the role of supervisory architect. Another architect will need to be assigned the duties of construction administration.

Management Agent/Management Agent Documents. {Samples only; revise wording to satisfy Account Executive}

- a. Management Agent approved by HUD cannot be replaced without PRIOR HUD approval.
- b. A Management Agreement is required and must be submitted and approved by the assigned Account Executive prior to initial closing.
- c. The Form HUD 9839B, Project Owner's / Management Agent's Certification, must be revised [provide specifics from AE review]
- d. Initial Endorsement is contingent upon HUD's approval of the HUD 9832, Management Entity Profile.
- e. Evidence of employee fidelity bond coverage equal to or greater than two (2) month's gross potential income must be provided with the closing documents.
- f. The Management Agent is already receiving a set HUD-approved Management Fee that the Owner and Agent have agreed upon to perform all the duties listed as additional

services. Charges for “Additional Services” performed by the Manager that are approved by the Owner will be paid to the Manager at a rate of \$XX per hour. If the Owner believes these duties warrant additional payment, those funds cannot come out of the property’s Operating Account.

Monthly Accounting Reports. {Sample only; revise wording to satisfy Account Executive} Form HUD 93479, Monthly Report for Establishing Net Income, Form HUD 93480, Schedule of Disbursements and Form HUD 93481, Schedule of Accounts Payable must be submitted from the beginning of rent-up activities through sustaining occupancy. Sustaining occupancy is defined as 93% occupancy for three consecutive months. Send these reports by the 10th of each month to” [name and address of assigned Account Executive]. In the first submission include the project’s fiscal year and the name of the person to whom all financial correspondence should be sent.